

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3829

IN THE MATTER OF:

Served October 8, 1991

Application of ANA HALLO TOURS)
(USA), INC., for Approval of)
Contract Pursuant to the Compact,)
Title II, Article XII, Section 3)

Case No. AP-91-26

Investigation of DESTINATION)
WASHINGTON, LTD., and PHOENIX)
TOURS, INC., with Regard to)
Compliance with the Compact)

Case No. MP-91-30

By correspondence filed April 9, 1991, through May 20, 1991, ANA Hallo Tours (USA), Inc. (ANA), seeks Commission approval of a contract with Destination Washington, Ltd. (DWL), pursuant to the Compact, Title II, Article XII, Section 3.

By Order No. 3805, served August 9, 1991, the Commission gave notice of the above-described application and, for reasons stated therein, named Phoenix Tours, Inc. (Phoenix), a party to the case, established a protest date, and directed certain filings by Phoenix and ANA. Some (but not all) of those filings were made. Two carriers filed formal protests and requests for hearing.

Protestant Nostalgia Tours, Inc. (Nostalgia), alleges that ". . . DWL and/or its affiliates and/or its principal have repeatedly engaged in practices which constitute apparent violations of the Compact . . . contrary to the public interest." These practices according to an affidavit by Nostalgia's representative include non-payment by DWL for transportation services rendered by WMATC-certificated carriers and DWL's apparent transportation of passengers between points in the Metropolitan District without WMATC operating authority. Nostalgia's representative states that DWL's ". . . practices of non-payment . . . serve to disrupt the bus industry in the Washington Metropolitan District, to the detriment of certificated carriers and ultimately the traveling public." Nostalgia's representative further states:

The Commission should look with care at this situation, since the proposal [at issue in Case No. AP-91-26] is to permit a company which, to my knowledge, has a very poor reputation for following sound business practices, to take over all of the business practices of an existing motor carrier, such as vehicle maintenance and compliance with driver safety regulations. While it may be that such an arrangement is acceptable in some circumstances, the Commission must recognize the public interest in having those responsible for compliance with operations and maintenance - as well as regulatory rules - be those with a demonstrated willingness and ability to comply with the law.

Nostalgia Tours, Inc., asks that the Commission either deny the application or, alternatively, set the matter for oral hearing ". . . to establish clearly the repeated course of conduct of DWL, Phoenix Tours and their principal, to the extent such conduct constitutes improper and possibly illegal activities."

Protestant Gold Line, Inc. (Gold Line), asserts that approval of the transaction would be inconsistent with the public interest for three reasons. First, DWL and Phoenix are commonly-owned and controlled affiliates both of which are "totally lacking in financial responsibility and [therefore] should not be placed in a position to deal with the public . . . under the guise of a regulated carrier" Second, by the proposal at issue in this case, DWL and Phoenix propose to engage in "a conspiracy or subterfuge" with ANA by which they would conduct tour operations between points in the Metropolitan District under a lease of ANA's operating authority as contained in WMATC Certificate No. 144. According to Gold Line, DWL and Phoenix propose to use ANA's name and equipment to transport passengers because "their" equipment ". . . would be immediately seized by numerous judgement and other creditors of Phoenix which have been unable to collect many thousands of dollars due to them from this financially irresponsible operator." Third, DWL is currently engaged in "deliberate, wilful and flagrant unlawful operations in the provision of per capita and other tour services" without obtaining WMATC authority or maintaining tariffs on file with the Commission as required. In support of these allegations, Gold Line submitted an affidavit of its sightseeing manager, photographs of equipment identified as owned and operated by DWL, and a brochure describing tours offered by DWL in the District of Columbia.

Gold Line asserts that representations regarding the relationship between DWL and Phoenix plus a full inquiry into all elements of the proposed contract and the details of DWL's alleged extensive, unlawful operations require formal oral hearing with opportunity for discovery and cross examination of relevant witnesses. If granted oral hearing, Gold Line will seek the issuance of subpoenas compelling the testimony of Mr. Seino, general manager of ANA; Mr. Forman of DWL; a responsible official of ANA Westin Hotel; and representatives of the other six hotels "now using DWL's unlawful service." Gold Line would also present testimony by its vice president/general manager, its sightseeing manager, and "in all probability" other employees of Gold Line, other carriers, and other companies interested in the provision of "responsible sightseeing service."

Case No. AP-91-26, turns on whether the contractual relationship between ANA and DWL is consistent with the public interest. The protests filed in that case contain a number of allegations which, if true, could indicate that approval of the relationship is not in the public interest. In fact, the allegations are such as to warrant the Commission's opening an investigation on its own initiative in order to determine (1) whether DWL is performing transportation subject to the Commission's jurisdiction without a WMATC Certificate of Authority; (2) whether DWL and Phoenix are passenger carriers operating within the Metropolitan District under common control without requisite Commission approval; and (3) whether DWL and/or Phoenix are in violation of any other Compact provisions or

Commission rules, regulations, or orders. The results of the investigation could, of course, affect the outcome of ANA's application case. Therefore, the two cases will be consolidated.

A hearing will be scheduled in these cases, and, to expedite matters somewhat, the filing of certain materials will be required. In addition, Phoenix Tours, Inc., is hereby given notice pursuant to the Compact, Title II, Article XI, Section 10(c) that Certificate of Authority No. 110 as issued to Phoenix Tours, Inc., 4807 Bethesda Avenue, Bethesda, MD, may be suspended and/or revoked based on the outcome of this investigation.

THEREFORE, IT IS ORDERED:

1. That a public hearing is hereby scheduled to commence in the hearing room of the Commission, 1828 L Street, N.W., Suite 703, Washington, DC 20036-5104, on Wednesday, November 13, 1991, at 10:00 a.m., and to continue from day to day thereafter until completed, unless otherwise directed by order or by the Administrative Law Judge.

2. That Destination Washington, Ltd., is hereby directed to file with the Commission no later than Thursday, October 31, 1991, an original and four copies of (a) a notarized list of the names and business addresses of all its stockholders, directors, and officers as of August 26, 1991; (b) a certified copy of its initial Articles of Incorporation together with all subsequent amendments; and (c) a current corporate Certificate of Good Standing.

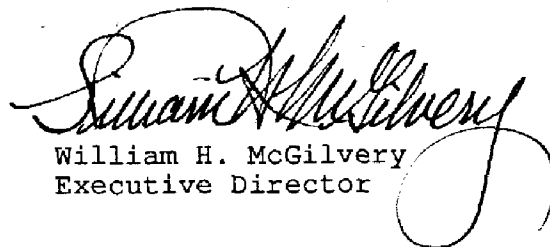
3. That Phoenix Tours, Inc., is hereby directed to file with the Commission no later than Thursday, October 31, 1991, an original and four copies of (a) a notarized list of the names and business addresses of all its stockholders, directors, and officers as of August 26, 1991; (b) a certified copy of its initial Articles of Incorporation together with all subsequent amendments; and (c) a current corporate Certificate of Good Standing.

4. That Gold Line, Inc., and Nostalgia Tours, Inc., are each hereby granted the status of intervenor in Case No. MP-91-30.

5. That any person (other than those already parties in these cases) seeking to be heard in Case No. MP-91-30 shall so notify the Commission in writing and any person seeking to become a party to the investigation shall file a petition to intervene pursuant to Commission Rule No. 16, no later than Thursday, October 31, 1991, and shall simultaneously serve a copy of such notice or petition on Destination Washington, Ltd., 10131 Bacon Drive, Beltsville, MD 20705; Phoenix Tours, Inc., 4807 Bethesda Avenue, Bethesda, MD 20814; ANA Hallo Tours (USA), Inc., 808 - 17th Street, N.W., Suite 450, Washington, DC 20006; Jeremy Kahn, Esq., 1726 M Street, N.W., Suite 702, Washington, DC 20036; and William F. King, Esq., 4660 Kenmore Avenue, Alexandria, VA 22304.

6. That any requests for formal discovery be filed with the Commission no later than Thursday, October 31, 1991.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:



William H. McGilvery
Executive Director